

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN V. NARAIN SINGH & OTHERS.

D. B. CRIMINAL APPEAL NO. 10/85

Under Section 378 (1), Cr.P.C., against
the Judgment dated 30.08.1984
passed by the learned Additional
Sessions Judge, Sri Ganganagar,
in Sessions Case No.37/83.

DATE OF JUDGMENT :::: 12-09-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, P.P., for State – appellant.
Mr. H.S.S.Kharlia, for respondents.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

The State has preferred this appeal against the judgment
dated 30-08-1984, passed by the Additional Sessions Judge, Sri
Ganganagar, in Sessions Case No.37/83.

The prosecution case is that Complainant – Surayan Singh lodged an FIR with Police Station, Hindumal Kot at 10.00 a.m. On 02.06.1983, stating therein that yesterday, he and his brother Charan Singh had some heat exchanges on water dispute. Following morning, Labh Singh came to his place and stated that he should come to Gur Dutt Singh to settle the dispute of water between him and Charan Singh. He and Labh Singh, thereafter, started to visit Gur Dutt Singh and, at that time, son Bhajan Singh was at his residence. When they reached to the shop of his brother Narain Singh at around 7 – 7.30 a.m., then it was found that Narain Singh, Charan Singh, Kala Singh, Resham Singh, Veer Singh, Kashmir Singh and Milkha Singh were sitting on the shop. Charan Singh was having sword and remaining were having 'lathis' and 'soties'. After seeing him, Narain Singh abused him and, in exchange, he also abused thereafter Narain Singh catch-hold of him and stated that he should not be allowed to go but he immediately ran towards his residence, where Bhajan Singh was found coming. When I reached near to my place, then, all the accused catch-hold to me and started beating. Milkha Singh had 'lathi' caused blow on his hand, Resham Singh hit him on right shoulder by a 'lathi', Narain Singh caused injury by a 'soti' and Kala Singh, Kashmir Singh and Veer Singh hit him on his heels by 'soties'. While his son tried to separate him from the accused, then Veer Singh caused a

blow to Bhajan Singh on his head. Hearing loud noise, wife Taru Bai came on the spot to save them and, at that stage, Charan Singh caused a blow on her head by a sword. The accused then returned back to their home. Wife – Taru Bai is being hospitalized and I and Bhajan Singh have come to report the matter.

First Information Report was registered under Sections 341, 147, 148, 323 and 324, IPC, being No.6/83. The Police, thereafter, conducted usual investigation and filed challan against Narain Singh, Kala Singh and Charan Singh under Sections 302, 323, 324 and Section 34 of IPC, in the Court of Judicial Magistrate, First Class, Sri Ganganagar, from where the case was committed to the trial Court.

The trial Court framed charges against three accused, out of which accused Charan Singh was charge-sheeted under Section 302 of IPC, Narain Singh was charge-sheeted under Section 302/34 and Section 323/34 of IPC and accused Kala Singh was charge-sheeted under Sections 302, 323/34 of IPC. All the accused denied the charges and claimed trial.

During trial, statements of PW 1 Surayan Singh and PW 2 Bhajan Singh were recorded and, at that stage, prosecution

submitted an application under Section 319 of Cr.P.C., with a prayer that based on statements of two witnesses, the Court should take cognizance against other accused named in the FIR.

After hearing both the parties, the trial Court vide its order dated 18.02.1984 took cognizance against the remaining accused under Sections 302, 323, 148 and 149 of IPC. Cognizance under Sections 148 and 149, IPC, was also taken against three accused, who were charge-sheeted by the Police. The remaining accused were charged under Sections 148, 323, 302 and 149 of IPC, who denied charges and claimed trial.

At the trial, statements of 12 witnesses were recorded, whereas twenty-eight documents were exhibited by the prosecution, whereas five documents were exhibited and one witness was examined by the defence. The trial Court, after detailed discussion, acquitted all the accused.

Learned Public Prosecutor urged that trial court has failed to appreciate statement of three eye witnesses while recording finding against the prosecution. It was further submitted that contradiction in regard to the story narrated in the First Information Report and stated by the eye-witness was not so grave so as to acquit all the accused. It was thus prayed that the

Judgment of learned trial court be set aside and accused be convicted and sentenced.

Per contra, learned counsel appearing for accused submitted that the trial court has drawn its conclusion after marshaling complete evidence on record. It was submitted that while recording the finding, trial court had considered the contradiction in evidence and found it to be grave therefore, it was not considered to be safe to give any credence to those statements. It was lastly submitted that even contradiction in the statement with that of medical evidence is again a serious consequence and thereby trial court has rightly recorded its finding in favour of the accused.

We have considered the rival submission made by the parties and peruse the record.

Learned Public Prosecutor has mainly relied on the statement of three witnesses who are the eye-witnesses of the occurrence. In that regard reference of the statement of P.W.1 Suravan, P.W.2 Bhajan Singh and P.W. 3 Smt. Pachho is being given. In the light of the argument we have gone through the statement of three witnesses to find out as to whether their exist contradiction in the prosecution evidence. In the First

Information Report complainant Surayan stated that accused Charan Singh gave blow to Smt. Taro by a sword, however, in the court statement not only complainant Surayan Singh as P.W. 1 but other two eye-witnesses Bhajan Singh and P.W. 3 Pachho stated that Charan Singh accused gave blow to deceased Smt. Taro on her hand by "Sheru" whereby a different weapon was assigned to the accused then what was assigned in the First Information Report. We considered it to be vital contradiction in prosecution witness and such contradiction cannot be ignored lightly as is being argued by the learned Public Prosecutor.

The second contradiction is between the statement of eye-witnesses and the medical evidence. In the statement of eye-witnesses, it has been stated that Charan Singh gave one blow to deceased Smt. Taro by "Sheru". However, if said statement is considered to find out as to whether it is corroborated by the medical evidence or not ? We find that as per the statement of Dr.Rajende Kumar Gupta P.W. 5 and Dr.H.P.Singh P.W. 11, deceased Smt. Taro sustained injury from a sharp edged weapon and not by a blunt weapon. Hence it becomes clear that even statement of eye-witnesses are not corroborated by medical evidence though learned Public Prosecutor prayed that such contradictions should have been ignored by the trial court but we find it to be difficult to ignore such contradiction because if the

prosecution story is supported by the eye-witnesses then it is necessary that the statement of eye-witnesses should dully corroborated by medical evidence so that reliance can be placed on their testimony. However, if their exist contradiction between statements and medical evidence, then testimony of witnesses can be given preference over the medical evidence, therefore, again we are not in agreement with the argument of the learned Public Prosecutor that even if statements of eye witnesses are in contradiction to the medical evidence then also contradiction should have been ignored.

The perusal of the record further shows that as per the statement of three eye-witnesses, accused Charan Singh caused only one injury to deceased Smt. Taro and as per the Injury Report Ex.P-26 one injuy was found on the body of deceased Smt. Taro. However, when Post Mortem Report was prepared, the three injuries were found though out of which first injury was regarding vein section caused during the course of treatment. However, apart from that two more injuries were reported out of which one was confirming to the injury report Ex.P-6 i. e. injury on right parietal region, however, third injury reported in post mortem was on the left fronto parietal temporal in the form of swelling however, this injury was not shown in the injury report and the prosecution had not clarified as to how this

injury was sustained by the accused. Out of three injuries discussed above, second and third injury was reported to be serious. However, out of those two serious injuries, one injury is not even mentioned in the injury report Ex.P-26. Hence if the prosecution evidence is looked into, it shows clear contradiction therein, in those circumstances, prosecution evidence becomes doubtful and order of conviction cannot be passed on contradictory evidence.

A further contradiction seen is in regard to the story given by the prosecution more specifically in regard to the place of occurrence. As per the statement given by complainant in First Information Report scene of occurrence is in thickly populated area, however, no independent witness was produced to corroborate the statement of eye-witnesses. Further, when in the First Information Report complainant stated that when he reached on the shop of his brother Naryan Singh then Naryan Singh first abused him and thereafter catch hold of him, at that time he ran towards his residence where his son Bhajan Singh was seen coming and there the incident took place. However, in the court statement complainant deposed his statement as P.W. 1 and stated that when he reached to Narayan Singh's shop then he was first abused and was caught hold of him, however, when he pushed him then Milkha Singh accused gave a blow on his hand by a lathi and thereafter

Resham Singh accused gave a blow by "Hasli" and, thereafter Narayan Singh caused injury on his hand by a lathi. His son Bhajan Singh came after hearing noise and in the process of separating complainant from others, accused Veera Singh gave a blow to Bhajan Singh. The statement of this eye-witness is quite in contradiction to First Information Report as in the FIR, it was stated that Bhajan Singh came before complainant was caused any injury however, in the court statement witness changed his version and stated that Bhajan Singh came after he was caused injury, such contradiction cannot be accepted for proving prosecution case. It has also seen that even there is a contradiction in the statements of eye-witnesses. As P.W. 2 Bhajan Singh states his mother Smt.Taro, sister Smt.Pancho and he reached to the scene of occurrence together. However, in the cross examination said Bhajan Singh stated that his mother and sister along with brother came 10 minutes after he sustained injury. Same way in the statement of P.W. 3 Pancho stated that she came at the place of occurrence after hearing loud noise of her father and brother whereas in the statement P.W.2 Bhajan Singh stated that his sister came along with him at the place of occurrence.

The learned Trial court further noticed that the sword was not recovered from accused Charan Singh though in the FIR sword was assigned to Charan Singh and as per statement

of eye-witnesses, a Sheru was recovered but not found to be blood stained. Thus, looking to all these contradictions the trial court acquitted all the accused because prosecution case was based on doubtful evidence.

In view of the discussions made above, we do not find any substance in the appeal rather we feel that learned trial court has rightly arrived at the conclusion that there are not only contradictions in the evidence but the statements of witnesses do not corroborate the story taken in the First Information Report and even there exist contradiction in their own statement apart from the fact that one statement does not entirely corroborated to the other statement. The medical evidence is also not supporting prosecution case. Thus, taking note of all these reasons, we are not inclined to interfere in the Judgment of the trial Court.

In view of the above, we dismiss the appeal, accordingly, the judgment of the trial Court is affirmed.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.